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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3686 OF 1991
WITH
CIVIL APPLICATION NO. 2565 OF 2010
IN
WRIT PETITION NO. 3686 OF 1991

Shankar Tukaram Sondakar,
(since deceased), through his legal
heirs and representatives :-

1A. Shri Dagadu Shankarrao Sondkar & Ors. ... Petitioners

Versus

Krishnarao Bhikoba Savale and others. ... Respondents

Mr. S.S.Kulkarni for the Petitioner.

Mr. N.P.Deshpande for the Respondents.

CORAM : **A.S.OKA, J.**

DATE ON WHICH JUDGMENT IS RESERVED : 26th November, 2010.

DATE ON WHICH JUDGMENT IS PRONOUNCED : 06th January, 2011.

JUDGMENT :

1 By this writ petition under Article 227 of the Constitution of India, the Petitioners who are the legal representatives of the original defendant-tenant have challenged the decree for possession passed by the trial Court under the provisions of Bombay Rents, Hotel and Lodging

House Rates (Control) Act, 1947 (hereinafter referred to as “the said Act”). The decree is passed on the ground of *bona fide* requirement incorporated under Section 13 (1)(g) of the said Act. The suit premises is a room more particularly described in the suit. The Respondents are the legal representatives of the original plaintiff. For the sake of convenience, the parties are hereinafter referred to with reference to their status before the trial Court. Various grounds of eviction were pleaded in the plaint. However, in this petition, we are also concerned with the ground of *bona fide* need under Section 13 (1)(g) of the said Act. It was contended by the plaintiff that his family consists of 12 members including 3 married sons and grand children. During the pendency of the suit, an amendment was carried out and the need of one Rajendra, a son of the plaintiff was also specifically pleaded. It was contended by way of amendment that the said Rajendra had taken up employment in Saudi Arabia and on expiry of the contract of employment, he had come back along with the members of his family. It was contended that the said Rajendra does not have any other independent premises.

2 The suit was contested by the Petitioner – defendant. It was contended that adequate premises were available to the plaintiff on the upper floor of the same building. Additional written statement was filed by the Petitioner – defendant contesting the claim made by the plaintiff on the ground of *bona fide* need. After the parties adduced evidence, the trial Court proceeded to pass a decree for eviction on the ground of *bona*

fide need. In the appeal preferred by the defendant, the said decree has been confirmed.

3 The present writ petition was admitted for final hearing on 18th November, 1991. The writ petition was dismissed for non-prosecution on 23rd March, 1994 on the ground of non removal of the office objection. Civil Application No. 2565 of 2010 has been taken out by the legal representatives of the Petitioner – defendant for restoration of the writ petition. It must be stated that the defendant died on 25th November, 1994 and therefore, in the said application, a prayer is made for bringing the legal representatives of the deceased defendant on record. When the said Civil Application came up for hearing, this Court showed inclination to restore the writ petition on merits provided the learned counsel appearing for the legal representatives of the Petitioner was willing to immediately argue the petition finally. Accordingly, writ petition was immediately taken up for final disposal.

4 The learned counsel appearing for the legal representatives of the defendant submitted that though evidence was brought on record before the trial Court to show that the original plaintiff was possessing several premises, without considering the said evidence, a finding of the *bona fide* need was erroneously recorded in favour of the original plaintiff. He submitted that the finding of the Courts below on the issue of comparative hardship is perverse. He invited the attention of the Court to

the various affidavits filed on record of the Petition for bringing the subsequent events on record of the petition. He pointed out that there is an additional affidavit filed by a legal representatives of the original defendant stating that the said Rajendra, a son of the original plaintiff is the owner of flat No.1119/1 on the 5th floor of a building in Sarita Nagari, Phase II situated at Sinhagad Road, Pune. He pointed out that in the said affidavit it is stated that the said Rajendra has purchased the flat in the name of his wife and that his wife has taken a telephone connection at the address of the said flat. The learned counsel pointed out that the said Rajendra was holding a factory premises. He also pointed out the assertions made in the other affidavits filed by a legal representative of the defendant dealing with the various affidavits filed by the said Rajendra, a son of the original plaintiff. He pointed out that the said affidavits disclose that the family of the original defendant – tenant continued to occupy the suit premises. The learned counsel pointed out that one Dagadu, one of the sons of the defendant has filed an additional affidavit stating that family of his brother Vijay along with his unmarried sister Lata were all along occupying the suit premises. He pointed out that the financial condition of both his brother and sister is very weak. He pointed out that during the pendency of the petition, the original plaintiff and his elder son Prakash have died. He pointed out that Dilip, the second son of the plaintiff has acquired a flat. He stated that there is material on record to show that the widow of Prakash had acquired a flat in Pune after the demise of her husband. He pointed out that as stated in

another affidavit filed by the said Dagadu, the said Rajendra has acquired a flat. He pointed out that in the affidavit of the said Dagadu, it is pointed out that even the six rooms which are in possession of the original plaintiff in the same property in which suit premises is situated are allowed to be occupied by the students on cot basis, which shows that the need pleaded by the plaintiff of his family is no longer in existence. He submitted that apart from the fact that a decree of eviction could not have been passed by the Courts below, the same cannot be sustained in view of subsequent events.

5 The learned counsel appearing for the legal representatives of the plaintiff pointed out that considering the fact that the family of the plaintiff consisted of 3 married sons and grand children, there are concurrent findings of fact recorded by both the Courts below on the issue of *bona fide* need and comparative hardship. He submitted that this writ petition was dismissed in the year 1994, but till today, the original plaintiff could not get fruits of the decree passed in a suit of the year 1987 on the ground of *bona fide* need. Inviting attention of the Court to various affidavits filed by the said Rajendra, he submitted that apart from the fact that the need of the family members of the plaintiff is subsisting, the material on record shows that for a period of one year, there is practically no electricity consumption in the suit premises. He submitted that the affidavits on record of the Writ Petition show that Rajendra was forced to take a flat on leave and licence basis. He submitted that no

case is made out for interference in the exercise of jurisdiction of this Court under Article 227 of the Constitution of India.

6 I have given careful consideration to the submissions. Rajendra, a son of the original plaintiff stepped into witness box in support of the plea of the *bona fide* need. The said Rajendra was also a constituted attorney of the Plaintiff. Another witness Dr. Sathe was examined by the plaintiff to prove that he was suffering from cancer and was advised to bed-rest. The defendant stepped into witness box. The defendant also examined his son Dagadu. While rejecting the ground of acquisition of suitable residence, the trial Court held that the defendant's son Dagadu had built a house and the defendant had no concern with the said house. The trial Court found that the plaintiff was residing in 6 rooms on the first floor of the same building in which suit premises is situated. The trial Court found that the family of the plaintiff consisted of he himself, his wife and his three married sons and grand children. It was brought on record in the evidence of Rajendra that one of his cousins was also residing with the family of the plaintiff. Rajendra deposed that from the year 1981, he was employed in Saudi Arabia and he returned to India in September, 1989. He stated that he has no other accommodation. It is brought on record that there was no latrine and bathroom on the first floor. Evidence of Dr. Sathe proved that the plaintiff was suffering from cancer of lungs. The trial Court accepted the evidence of Dr. Sathe that the plaintiff was suffering from cancer and his

health condition was poor. The trial Court held that there were 4 married couples in the family of the plaintiff which included his wife, three married sons and grand children. There were only six rooms in possession of the family. Therefore, the trial Court recorded a finding on the ground of *bona fide* need and comparative hardship against the defendant.

7 The Appellate Court has discussed the evidence on the issue of *bona fide* need. During the pendency of the appeal, the original plaintiff died. It was contended that Rajendra's cousin who was residing as the member of the family of the plaintiff got married during the pendency of proceedings. The Appellate Court rejected the argument of the defendant that the details of *bona fide* need were not specifically pleaded. The Appellate Court held that there was a clear pleading in the original Plaint that there were 12 members in the family of the plaintiff including three married sons. By amendment, the need of Rajendra and his family was specifically pleaded. The Appellate Court also considered the argument of the defendant that the plaintiff could have constructed a second floor on the property. The Appellate Court confirmed the finding of the trial Court that family of the plaintiff consisted of three married sons and there were grand children. The Appellate Court found that it was brought in evidence that there was no place to construct latrine and bathroom on the first floor. Thus, the concurrent findings of fact recorded by both the Courts below are that on the date of institution of the suit, the plaintiff was in possession of only six rooms on the first floor of the

building and that his family consisted of himself, three sons, their respective wives and six grand children. It was concurrently held that there was no facility of latrine and bathroom on the first floor. Thus, what was accepted by both the Courts below is that six rooms were not sufficient to satisfy the need of the large family of the Plaintiff.

8 Before advertng to affidavits filed in the writ petition, it must be stated that the aforesaid findings of both the Courts below on the issue of *bona fide* need are based on appreciation of oral and documentary evidence on record. The family of the Plaintiff consisting of four married couples and six grand children was in possession of only six rooms on the first floor and there was no facility of latrine and bathroom on the first floor. Another finding of fact based on evidence of Dr. Sathe is that the Plaintiff was suffering from cancer and was bedridden. It is not possible to interfere with the said findings in jurisdiction of this Court under Article 227 of the Constitution of India. As far as the issue of comparative hardship is concerned, both the Courts below held that no attempt was made by the defendant to find out any other accommodation. The Appellate Court dealt with the stand taken by the defendant in his pleadings and came to the conclusion that the defendant had changed his stand from time to time. The Appellate Court considered the stand taken by the defendant in evidence that the landlords were demanding sum of Rs.10,000/- for giving residential premises on rent. The Appellate Court found that there was no pleading

to that effect in the written statement. As against this, the Appellate Court considered the evidence of Rajendra who deposed that he made unsuccessful attempts to secure accommodation at Katraj and Warje in Pune. The Courts below have recorded concurrent finding on the issue of comparative hardship against the defendant – tenant. As pointed out earlier, while dealing with the issue framed on the ground of acquisition of suitable residence, the trial Court held that a house was constructed by the said Dagadu, a son of the deceased defendant.

9 Reliance has been placed on the affidavits filed in this writ petition. It must be noted here that suit was filed by the plaintiff in the year 1987 on the ground of *bona fide* need of his large family consisting of three married sons and grand children. Both the Courts below accepted the ground of *bona fide* need. The appeal was decided in the year 1991. The present petition filed by the Petitioner in the year 1991 was dismissed for non-prosecution in the year 1994. During such a long span, it will be unjust to expect that the members of the family of the landlord will continue to reside in very inconvenient premises consisting of six rooms. Rajendra, son of the plaintiff has filed an affidavit dated 17th November, 2010 setting out that Vijay, one of the sons of the defendant is the owner of a bungalow at Dhankawadi, Pune. Various details such as telephone number of said Vijay have been set out in the affidavit. It is pointed out that the said Vijay has shifted his gas connection to the address of his bungalow. There is another affidavit of Rajendra filed in

October, 2010 in which he has stated that the electricity consumption of the suit premises from the year 2006 onwards is negligible. A chart has been annexed to the affidavit showing that for a period of 58 months ending with October, 2010, average consumption of electricity in the suit premises is only of 9.24 units per month. There is an affidavit filed by the Dagadu, a son of the defendant stating that his brother Vijay and sister Lata continue to occupy the suit premises and in fact children of Vijay are studying in school. In another affidavit filed by Dagadu, it is stated that Rajendra has acquired a flat on the 5th floor of a building in Sarita Nagari, Phase II situated at Sinhagad Road, Pune. The said Dagadu has stated that Prakash, elder son of the plaintiff died during the pendency of the writ petition. He stated that widow of Prakash had acquired a flat and another son Dilip has also purchased a flat.

10 Rajendra has filed affidavits dealing with the said contentions. He pointed out that his elder brother Prakash died in the year 2003 and he is survived by widow, son and a daughter. It is pointed out that his brother Dilip has a son and daughter. Rajendra pointed out that his family consisted of himself, his wife, a son and daughter. He stated that in the year 2003, it became impossible for Dilip to stay with members of the family in the accommodation on the first floor and therefore, he shifted to Anandnagar. Rajendra stated that as the premises on the first floor were not convenient, he had to acquire a flat on the fifth floor of building B3 in Sarita Nagari under a leave and licence

agreement dated 1st September, 2009. He has annexed a photo copy of the registered leave and licence agreement. He has stated that family members of Prakash were residing in a flat owned by a relative in Pune. Rajendra stated that he was paying licence fees of Rs.11,500/- per month and that the licensor was pressing for vacating the flat as he was getting better offers. In the said affidavit, it is stated that Bandu and Dagdu, the two sons of the tenant have their own premises. He stated that Dagdu has constructed bungalow and Bandu had acquired a flat. He stated that third son of the defendant Vijay has made his own arrangement and that the suit premises is not being used for last few years.

11 Thus, the subsequent events, which are brought on record have taken place from the year 2003 onwards. The said events are of the death of eldest son of the original plaintiff and of fact that another son Dilip was forced to shift in the year 2003 to another accommodation. The third event is that Rajendra has taken a flat on leave and license basis at license fee of Rs.11,500/-. The family of deceased Prakash had to reside in a premises of a relative. These events have taken place 16 years after filing of the suit. As stated earlier, the accommodation on the first floor does not have facility of latrine and bathroom. The said Rajendra after working abroad has come back to India and was forced to acquire a flat on the leave and licence basis at monthly license fees of Rs11,500/-. Due to inordinately long life of the litigation, these are the events, which have taken place in the large family of the original plaintiff. By no stretch

of imagination, the said subsequent events can be said to have the effect of eclipsing the need pleaded by the Plaintiff which has been held as established by both the Courts below.

12 On the other hand, the subsequent events pleaded by the legal representatives of the defendant do not improve the case of the legal representatives of the defendant on the issue of comparative hardship.

13 In the circumstances, the subsequent events brought on record do not affect the decree of eviction passed by the Courts below on the ground of *bona fide* need. Hence, there is no merit in the writ petition.

14 Hence, I pass the following order:

- i. Civil Application No. 2565 of 2010 is allowed in terms of prayer clauses (a) to (d).
- ii. Writ petition is rejected. Rule is discharged with no order as to costs;
- iii. The decree for possession shall not be executed for a period of six weeks from today subject to condition that the legal representatives of the

Petitioner will not create any third party rights in respect of the suit premises and will not part with the possession thereof.

[A.S.OKA, J]